



COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

**DEPARTMENT OF
TELECOMMUNICATIONS & ENERGY**

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BOSTON, MA 02110
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PROCEDURAL MEMORANDUM

TO: All Parties to D.T.E. 98-57-Phase III (*via E-mail and Regular Mail*)

FROM: Jesse Reyes, Hearing Officer

RE: Suspension of evidentiary hearing and request for comments on recent D.C. Circuit Court rulings

DATE: June 10, 2002

In U.S. Telecom Ass'n v. FCC, Nos. 00-1012 and 00-1015, slip. op. (D.C. Cir. May 24, 2002), the U.S. Court of Appeals for the District of Columbia Circuit vacated and remanded the Federal Communications Commission's ("FCC") order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999) ("UNE Remand Order") and Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, FCC 99-355 (rel. Dec. 9, 1999) ("Line Sharing Order"). Because the Department of Telecommunications and Energy ("Department") had stated in D.T.E. 98-57 Phase III, at 87-88 (Sept. 29, 2000) that the FCC's rules on unbundling packet switching promulgated in the UNE Remand Order would guide the Department's investigation in this proceeding, the Department may need to re-evaluate how to proceed.

The hearing officer requests comments from all parties on the effect of the recent court rulings. Specifically, the hearing officer requests that the parties address the following:

1. What is the effect of the D.C. Circuit Court's ruling in U.S. Telecom Ass'n v. FCC on this proceeding?
2. Should the Department proceed with its investigation or wait for the FCC to address packet switching in its Triennial Review?

3. If the Department proceeds, what is appropriate standard of review and analysis required?
4. Is the current record in this proceeding sufficient to support the type of analysis now required under the “impair” standard? If not, what is the scope of the evidence that must be developed?

The hearing officer requests that all parties file initial comments with the Department by June 24, 2002. Any party may file reply comments by July 1, 2002. The Department is suspending the current procedural schedule until it reviews the parties’ comments. Any discovery requests and any evidence that the parties intended to submit in connection with the reopening of the record, see D.T.E. 98-57 Phase III, Hearing Officer Ruling (May 24, 2002), are to be withheld until the Department restates the scope of this proceeding, if necessary, and issues a new procedural schedule.

If you have any questions, please contact Jesse Reyes (617) 305-3735.

Jesse S. Reyes,
Hearing Officer

Date